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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/022,961	12/13/2001	Raphael Fifo Meloul	1351-1-1	7189

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EXAMINER

SCHAETZLE, KENNEDY

ART UNIT	PAPER NUMBER
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3762

6

DATE MAILED: 05/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/022,961

Applicant(s)

MELOUL ET AL.

Examiner

Kennedy Schaetzle

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 March 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 4, 10, 20, 30, etc., etc.. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the personal computer 62 (Fig. 2 merely shows a box labeled "signals from external storage") as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "50" has been used to designate both the user controller and the boxes labeled "signals from clinician controller" (Fig. 3) and "signals from user controller" (Fig. 4). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

4. The disclosure is objected to because of the following informalities: Numerous errors occur in the referencing of elements (see comments above). Element 78, for example, is described in the specification as a central processing unit (page 14, line 12), yet is shown in Fig. 3 as a controller memory, and element 80 is described as a memory (line 13 of page 14), yet is shown in the drawings as an input processor.
Appropriate correction is required.
5. The examiner highly recommends careful perusal of the specification, drawings and claims in order to correct for errors not specifically mentioned above.

Claim Objections

6. Claims 1 and 7 are objected to because of the following informalities: the reference to "said data processing device" on line 14 of page 20 (claim 1) lacks antecedent basis. The examiner will assume it was the applicants' intent to refer to the means for loading data. A related comment applies to claim 7. Appropriate correction is required.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 it is unclear if the output device of recited in paragraph (c)(iv) relates to the output device of paragraph (d), or if the applicant is attempting to recite two output devices. The applicant should refer to *said* output device in paragraph (d) if the former condition is true. A related comment applies to claim 7.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Currea (Pat. No. 3,213,851) in view of Gavish (Pat. No. 5,076,281) and Grevious (Pat. No. 6,443,891).

Currea discloses a device for producing rhythmic stimuli to a user comprising a housing (casings shown in Fig. 1), a first controller 18 for use by the user, a second controller 24 for programming the first controller (the examiner considers the second controller to program the first controller by virtue of the fact that it limits the amplitude of the pulsations and thus restricts the range of volume control available in the first controller (note col. 2, lines 30-33)), an output device (those elements of the circuitry that generate audio and visual output), and means for creating a detectable signal (headphones 12 and elements 14 and 16). The second controller also has a user interface (generally the control knobs and input switches 26-28, etc.). The output device includes means for producing a synchronizing timing signal (generally multi-vibrator 34 and associated switches), and an audio synthesizer (elements 30 and/or 32).

Although Currea does not discuss the use of the recited CPUs and associated non-volatile memories (and concomitantly the means for loading data into the non-volatile memory), it should have been readily apparent to those of ordinary skill in the electronic circuitry design arts that such elements could be used in the construction of the Currea device. Clearly when the Currea patent application was filed in 1960, such components were not available to the circuit designer. The use of the CPU and its requisite non-volatile memory has since then become ubiquitous in circuit design. Gavish discloses, for example, a user controller similar in form to that shown by Currea. Gavish shows such a unit with a CPU 16 and non-volatile memory (element 18 as well as that memory inherently necessary to store the code required to operate the CPU). Grevious further discloses the use of multiple CPUs (programmers 15, 25 and 35) and associated memory employed in the construction of first and second controllers as well as the output device. To utilize CPUs to monitor patient and operator input and control device output accordingly, would have been considered obvious by those of ordinary skill in the medical treatment arts. CPUs have long been recognized as suitable devices for enhancing and effecting control.

Furthermore, regarding the recitation regarding the control of the first controller via the second controller, as stated above, the examiner considers the second controller

to program the first controller by virtue of the fact that it limits the amplitude of the pulsations and thus restricts the range of volume control available in the first controller (note col. 2, lines 30-33). In any event, Grevious teaches that it may be desirable to utilize two controllers—one for the physician and one for the patient—in order to provide safe and effective treatment. Such arrangements are old and well-known in the medical arts, and allow the patient to follow the prescribed treatment regimen dictated by the physician while still enabling the freedom to adjust device operations to meet the immediate needs of the patient absent physician supervision.

Regarding claim 2, the examiner considers the headphones 12 to comprise a housing for holding the acoustic transducer.

Regarding claim 3, while Currea does not explicitly discuss the use of memory for storing rhythmic sounds, musical tunes and accompanying parameters, Gavish discloses such an element (note element 18 of Fig. 2 and the text abridging cols. 4 and 5). The use of memory gives the therapist/patient a known repertoire of readily available sounds/music from which to choose the most effective or pleasing therapy without having to “reinvent the wheel” by manually adjusting all the musical parameters by hand. Those of ordinary skill in the art wishing to enhance the ease and speed of operation as well as the effectiveness of treatment would have therefore seen the obviousness of employing the memory of Gavish in the system of Currea.

Regarding claim 4, note col. 2, lines 30-33 of Currea and also the text abridging cols. 4 and 5 of Gavish.

Regarding claim 5, the examiner considers it inherent that any memory has a memory area for storing data including programs and other information.

Regarding claim 6, the examiner considers the headphones to inherently possess a transducer for creating a detectable signal.

Regarding claim 7, note the comments made above when addressing similar claim limitations.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

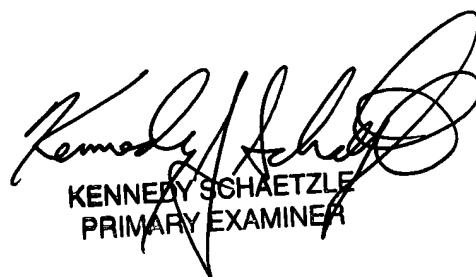
Art Unit: 3762

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kennedy Schaetzle whose telephone number is 703 308-2211. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KJS
May 14, 2004



KENNEDY SCHAETZLE
PRIMARY EXAMINER